

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of:

RICHARD K.

Claimant,

vs.

HARBOR REGIONAL CENTER,

Service Agency.

OAH Case No. L 2007020210

DECISION

This matter was heard by Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, on April 4, 2007, at the Harbor Regional Center in Torrance, California.

Claimant's brother, Curtis K., represented Claimant.¹ Brandy Steward, Program Representative, represented the Harbor Regional Center (HRC or Service Agency).

During the hearing, the testimonial and documentary evidence referenced below was presented and closing arguments were made. The record was thereafter closed and the matter was submitted for decision at the conclusion of the hearing on April 4, 2007.

ISSUE

Shall Claimant be placed in the Special Needs Program sheltered workshop operated by Hillside Enterprises (a division of ARC Long Beach)?

EVIDENCE RELIED UPON

Documentary: Service Agency exhibits A-D, G-L, and official notice was taken of exhibits E-F; Claimant exhibits 1-9, and official notice was taken of exhibit 10.

Testimonial: Hiram Bond, HRC Program Manager (Older Adults); Dr. Sri Moedjono, HRC Staff Physician; Curtis K., Claimant's brother; Harry Van Loon, Executive Director Hillside Enterprises; and Yasmin Malayeri, Program Manager Hillside Enterprises.

¹ The last names of Claimant and his brother are omitted to protect their privacy.

FACTUAL FINDINGS

Parties & Jurisdiction

1. Claimant is 56-year-old male who is a client of the Service Agency based on his diagnoses of Moderate Mental Retardation and Down Syndrome.
2. In January of 2007, Claimant's brother Curtis K. requested the Service Agency to provide funding for the service described in the Issue section above.
3. By a letter dated January 25, 2007, the Service Agency denied the request.
4. On February 2, 2007, the Service Agency received a Fair Hearing Request on Claimant's behalf, which appealed the denial of the funding request.

Facts Related to the Requested Funding

5. Claimant is non-conserved and lives in a level 4 group home. He recently moved to the United States from Canada after his father passed away. He lives near his older brother Curtis K., who is extremely involved in Claimant's life. Claimant's daily living skills are extremely low. He has recently been diagnosed with Alzheimer's disease.
6. At the present time, Claimant is not in a day program. The parties agree that Claimant needs to be placed in a day program, but they disagree about the type of day program best suited for him.
7. Claimant and his family would like him to be placed in the Special Needs Program, which is a sheltered workshop operated by Hillside Enterprises, a division of ARC of Long Beach. A workshop is a facility where those with disabilities perform paid labor under close supervision and assistance, usually involving rote performance of simple tasks, such as assembling items or folding napkins. The Special Needs Program is a sheltered workshop, meaning it is designed for more severely incapacitated disabled clients, such as those with dementia, extremely poor gross motor skills, or those confined to wheelchairs; and thus, a greater level of assistance and supervision is provided. Special Needs Program clients are encouraged to work, but they are also allowed to voluntarily disengage from their labors at any time and participate in social or leisure activities.
8. The Service Agency denied Claimant's request to be placed in a sheltered workshop primarily because its interdisciplinary team feels that its clients are better served by "progressive" day programming that enhances daily living skills and learning. Although the Service Agency's overall philosophy regarding day programs is appropriate, it cannot be equally or fairly applied to all clients under all circumstances. Claimant's situation is such an exception. In light of his recent dementia and declining skills due to Alzheimer's disease, it is not expected that Claimant would benefit by the type of progressive day programming envisioned by the Service Agency, as follows:

A. Claimant's treating psychologist, Dr. Susan Naifeh, has recently concluded that Claimant "is unable to try a new activity to learn about something new," and she recommends that Claimant be placed in a very structured setting to accommodate his low functioning.

B. Claimant's treating neurologist, Dr. Anne Tournay, believes that Claimant's cognitive and functional abilities will continue to decline as a result of his Alzheimer's disease. For that reason, she is concerned about Claimant being placed in a day program that will cause him to become frustrated as his functioning declines.

C. Claimant recently participated in a day program operated by the Easter Seals in Torrance, which is more akin to the type of day programming preferred by the Service Agency. Part of the program involved learning-oriented activities on site among groups of five to six clients. However, Claimant had a bad experience in that program. As his dementia worsened, Claimant became increasingly frustrated by his inability to learn new skills and activities, which eventually led him to engage in unpleasant outbursts.

D. According to Claimant's older brother, a progressive day program would have been ideal for Claimant 10-20 years ago, but it is not at the present time, given Claimant's deteriorating skills and interests.

9. The Service Agency also expressed concern about the fact that the requested service does not involve community integration. However, Claimant also had a bad experience with the community-based component of the Easter Seals day program, i.e. going on community outings. As Claimant's dementia worsened, he increasingly had greater difficulty participating in those outings; and eventually he failed to cooperate with staff in keeping up with the group, walking to specified areas, etc.

10. The Service Agency also expressed concern that a workshop setting would not be good for Claimant's fragile condition because he might become frustrated by production goals and expectations. While the Special Needs Program does have production expectations, clients are allowed to work at their own pace and, as described above, are allowed to voluntarily opt out of production activities. In fact, the Special Needs Program is specifically designed for those who are not able to participate in a regular workshop setting with more rigid production expectations. Claimant had previously participated in a sheltered workshop in Canada for several years with success. He has visited the Special Needs Program twice, and both times he appeared to be comfortable and to enjoy himself. The Special Needs Program serves several other Service Agency clients, as well as clients of other regional centers. No evidence indicated that the program's production expectation has created problems for those other clients or that it is likely to cause a problem for Claimant.

11. The Service Agency's hearing representative also expressed concern during the hearing that the Special Needs Program has a higher staff-to-client ratio than that of the day programs referred to Claimant's family by the Service Agency. The evidence only established that such was the situation for two of the day programs referred by the Service Agency, in that those two programs have ratios of 1:3 or 1:4, compared to the Special Needs Program ratio of 1:6. However, it was not established that that slight disparity of staff-to-client ratio would pose a problem for Claimant at the Special Needs Program or that it has for any of the Service Agency's other clients there.

12. Claimant's family has visited several of the day programs referred to them by the Service Agency, as well as the Special Needs Program. Based on their own observations of the facilities they visited, and Claimant's reaction to the Special Needs Program, Claimant's family believes that the Special Needs Program best suits Claimant's current needs. Staff from the Special Needs Program have observed Claimant interact in the program and believe that he is a good fit. The Special Needs Program is sufficiently structured to meet the above-described concerns expressed by Dr. Naifeh and Dr. Tournay.

LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, § 4500 et seq.)² An administrative “fair hearing” to determine the rights and obligations of the parties, if any, is available, and is referred to as an appeal of a service agency decision. (§§ 4700-4716.) Claimant timely submitted a Fair Hearing Request which properly framed the issue on appeal. Jurisdiction in this case was therefore established. (Factual Findings 1-4.)

2. Where one seeks eligibility for government benefits or services, the burden of proof is on him. (See, e.g., *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 (disability benefits).) The standard of proof in such cases requires proof by a preponderance of the evidence, because no other law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.) Since Claimant is requesting a service that the Service Agency has not before agreed to provide, Claimant has the burden of establishing entitlement to that relief by a preponderance of the evidence.

3. A fundamental premise of the Lanterman Act is that the determination of which services and supports are necessary for each consumer must include considering “the needs and preferences of the consumer” (See, e.g., §§ 4512, subd. (b); 4646, subd. (a).) Generally, regional center consumers have the right to make choices in their own lives, such as “their relationships with people in the community, the way they spend their time, including . . . employment . . . and leisure, . . . and program planning and implementation.” (§ 4502, subd. (j)). Regional centers are therefore required to respect and support the decision-making authority of the family; be flexible in meeting the unique and individual needs of consumers and

² All further statutory references are to the Welfare and Institutions Code, unless otherwise specified.

their families as they evolve over time; and meet the cultural preferences, values, and lifestyles of consumers and their families. (§ 4685, subd. (b).) When selecting a provider of consumer services and supports, consideration must be given to the prospective provider's ability to deliver quality service or support, the provider's success in achieving stated objectives of the service or support, and as referenced above, the consumer's choice of providers. (§ 4648, subd. (a)(6).)

4. Claimant established by a preponderance of the evidence that he is entitled to the requested service funding. The parties agree that Claimant is in need of day programming. It was established that Claimant's day programming needs will be met by the Special Needs Program. Placing Claimant in that program will support the Lanterman Act's objective of respecting the choices of the consumer and his family. The provider of the Special Needs Program has shown the ability to provide quality day programming services that meet the needs of its regional center clients. Although the Service Agency initially had concerns regarding placing Claimant in a sheltered workshop environment, it was not established that any of those concerns warrant denial of the requested funding. In sum, placing Claimant in the Special Needs Program is consistent with all of the above stated goals and objectives of the Lanterman Act. (Factual Findings 5-12.)

ORDER

Claimant Richard K.'s appeal is granted. The Service Agency, Harbor Regional Center, shall forthwith provide funding for Claimant to be placed in the Special Needs Program sheltered workshop operated by Hillside Enterprises, a division of ARC Long Beach.

DATED: April 13, 2007

ERIC SAWYER,
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.